IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 72 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KALUBHAI MAVJIBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 72 of 1997

MR RC KAKKAD for appellant.

MR AY KOGJE, APP, for Respondent

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE SHARAD D.DAVE

Date of decision: 21/06/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE J.M.PANCHAL)

By filing instant appeal under Section 374(2) of the Code of Criminal Procedure, 1973, the appellant has challenged legality of judgment dated November 22, 1996 rendered by the learned Additional Sessions Judge, Rajkot, in Sessions Case No. 330 of 1993, by which he is convicted of the offences punishable under Sections 302 & 364 of the Indian Penal Code, and sentenced to suffer imprisonment for life and fine of Rs.500/-, in default, S.I.for six months, for the offence punishable under Section 302 of the Indian Penal Code, and R.I. for five years and fine of Rs.500/-, in default, S.I. for six months,for the offence punishable under Section 364 of the Indian Penal Code.

2. During the course of hearing of the appeal, Mr.R.C.Kakkad, learned advocate of the appellant, has produced (i) a xerox copy of certificate dated March 1, 2001 issued by the Medical Officer, General Hospital, Rajkot, which indicates that postmortem of dead body of Kalubhai Mavjibhai Ajudia was performed at the Hospital on March 1, 2001 by Dr.J.D.Tank, (ii) a xerox copy of communication dated March 1, 2001 issued by Rajkot Municipal Corporation to the Manager of Shree Seva Samiti, Rajkot, requesting the said Institution to make arrangement for cremation of dead body of Kalubhai Mavjibhai Ajudia, and (iii) a xerox copy of receipt dated March 1, 2001 issued by Fire-Brigade Department of Rajkot Municipal Corporation to Dineshbhai, who is brother of deceased Kalubhai, indicating that a sum of Rs.50/-was recovered from Dineshbhai as charges for removing the dead body of deceased Kalubhai from postmortem-room, Rajkot to the house of Dineshbhai situated at village Madhapar, District : Jamnagar, for perusal of the Court. The above-referred to documents are ordered to be taken on record of the appeal. The learned counsel further states that the above-referred to documents were handed over to him by Dineshbhai Mavjibhai, who is brother of the appellant, and has prayed that as the appellant has expired during the pendency of the appeal, the same may be disposed of in accordance with law.

3. Mr.A.Y.Kogje, learned Additional Public Prosecutor, was requested to verify with the jail authorities whether the appellant has expired or not. After verification, the learned Additional Public Prosecutor states at the Bar that the appellant was given Prisoner No. S-6468 and that he has passed away while on parole at his village.

4. In view of the statements made at the Bar by the learned counsel of the appellant as well as by the learned Additional Public Prosecutor, there is no manner of doubt that the appellant has expired during the pendency of the appeal. Section 394 of the Code of Criminal Procedure,1973, inter-alia, provides that every appeal under Section 377 or Section 378 shall finally abate on the death of the accused and every other appeal under Chapter-XXIX, except an appeal from a sentence of fine shall finally abate on the death of the appellant. As the appellant has died during the pendency of the appeal filed under Section 374(2) of the Code, it will have to be held that the appeal has finally abated on his death. Therefore, it is held that instant appeal has finally abated on the death of the appellant. The appeal accordingly stands disposed of.

(J.M.Panchal, J.) (Sharad D.Dave,J.)

(patel)